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The Judicial Process

Discovery and Deposition

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SUMMARY

This chapter explores the nature and conduct of pretrial discovery and the deposition process from the physician's point of view. Practical suggestions for witness preparation and guides to recognition of the methods, procedures, and goals of the plaintiff attorney are presented. Courtroom deportment is discussed, and model questions and appropriate responses are included.

Key Words: Deposition; interrogatory; discovery; medical malpractice.

INTRODUCTION

There are several aspects to the process of discovery. The first aspect is production requests. During this phase, documents, slides, and X-rays may be requested. During written interrogatories, the plaintiff attorney will pose a limited number of detailed written questions for you (in conjunction with your attorney) to reply to under oath (1,2). Another aspect to discovery is oral interrogation, also known as a *deposition*. Well before the deposition, the defendant should insist on a meeting with his or her lawyer. This will allow time to know what is expected of you. Also, if something new or unexpected arises, there will be time to deal with it. It is reasonable to have someone from your

attorney's office cross-examine you as part of your preparation. It is important to note that everything you write is discoverable except for direct communications to your lawyer. Consequently, if you are going to keep written notes, it is advised that you record only facts and not opinions.

DISCOVERY: DEPOSITION

The purpose of a deposition is discovery by both sides so that there are no surprises at trial. The deposition is the most important event for the defendant physician before trial (1–7). The location of the deposition may vary. It is often held in the plaintiff attorney's office. However, one can ask to have it in a setting in which the pathologist feels more comfortable, such as in the hospital. The deposition is typically attended by a court reporter, who will record everything. Also present will be your attorney and the plaintiff attorney. There may be other defense attorneys present if they represent other parties within the lawsuit, such as codefendant physicians or the hospital. The possibility exists that the plaintiff's family could also be present. The deposition is taken under oath and can be read to the jury at trial. The format of the deposition is for the opposing (plaintiff's) attorney to pose a series of questions (cross-examination). Your defense attorney will follow, typically with fewer questions, to clarify certain points raised during cross-examination. Bring your curriculum vitae, but do not bring literature or notes because they will be discoverable.

There are several underlying purposes of the deposition. These are described here.

Plaintiff's Goal: To Be Educated About Your Strategies and Information

The defendant's or physician's role is not to educate the opposing attorneys, but rather just to answer their questions:

- Do not volunteer unnecessary information. If you provide them with information they did not request, it may deprive your attorney of determining when certain information will be disclosed for maximal impact.
- In general, answer questions with either a simple yes or no or short, complete sentences. Providing a lengthy discourse may open up further questions or opinions that may be detrimental to your case.
- A common ploy will be for the plaintiff's lawyers to pause for long periods of time. Do not feel the need to fill in the silence. The attorney